



**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

APPEAL DECISION SUMMARY

APPEAL No: 2010-2654

DATE: December 16, 2010

OUTCOME: (check one)

 X SUSTAINED REVERSED REMANDED
 INVALID/FULL
 SUSTAINED and REMANDED
 REVERSED and REMANDED
 AGENCY ERROR/OTHER

ISSUE ON APPEAL: Eligibility – ABD –excess resources

GENERAL RULE OF LAW: Standards for resource eligibility

1. Section 1924 of the Social Security Act contains special eligibility rules that apply ONLY to married institutionalized individuals whose first continuous period of institutionalization began on or after September 30, 1989. These rules are intended to prevent the impoverishment of a spouse living in the community when the other enters long-term care. For resource assessment and eligibility determination, the resource value is its value as of the first moment of the first day of a calendar month. Social Security Act, Section 1924. Medicaid Manual, Volume XIII, M1480.000, A (p. 1).
2. Section 1924 supersedes all other sections of Medicaid law when determining countable resources and income of a married institutionalized individual who has a community spouse. Therefore, the usual Medicaid eligibility rules do not apply to an institutionalized individual with a community spouse whenever the usual Medicaid rules conflict with the law in section 1924. Social Security Act, Section 1924. Medicaid Manual, Volume XIII, M1480.000, A (p. 1).
3. An institutionalized spouse is an individual who is in a medical institution, who is receiving Medicaid waiver services or who has elected hospice services, and who is married to a spouse who is not in a medical institution or nursing facility. The term “community spouse” means the spouse of an institutionalized spouse. The community spouse can be living outside an institution or in a residential institution such as an adult care residence. Medicaid Manual, Volume XIII, M1480.000, A (p. 1)
4. A Resource Assessment must be completed when a married institutionalized individual with a community spouse who is screened and approved to receive nursing facility or CBC waiver services applies for Medicaid. Medicaid Manual, Volume XIII, M1480.200, B, 3, b (pp. 8a-b).

5. For purposes of the resource assessment and spousal share calculation, countable and excluded resources are determined for all covered groups using the ABD resource policy in Chapter S11, regardless of the individual's covered group and regardless of community property laws or division of marital property laws, except for the following resources which are excluded as indicated below when completing the resource assessment and spousal share:

- the home and all contiguous property;
- one automobile, regardless of value;
- Disaster Relief funds for 9 months;
- retroactive SS & SSI payments received on or after 11/1/05 for nine (9) calendar months following the month in which the individual receives the benefits. For retroactive SSI and SS benefits received before 11/1/05, exclude from resources for six (6) calendar months; and
- up to \$1,500 of burial funds for each spouse (NOT \$3,500).

Resources owned in the name of one or both spouses are considered available regardless of whether either spouse agrees to sell or liquidate the resource, and regardless of whether either spouse refuses to make the resource available.

Medicaid Manual, Volume XIII, M1480.220, B, 2, (pp. 13-14).

6. For purposes of the eligibility determination, countable and excluded resources are determined for all covered groups using the ABD resource policy in Chapter S11, regardless of the individual's covered group and regardless of community property laws or division of marital property laws, except for the following resources which are excluded as indicated below when determining eligibility of the institutionalized spouse:

- the home and all contiguous property;
- one automobile, regardless of value;
- Disaster Relief funds for 9 months;
- retroactive SS & SSI payments received on or after 11/1/05 for nine (9) calendar months following the month in which the individual receives the benefits; and
- up to \$3,500 of burial funds for each spouse.

Resources owned in the name of one or both spouses are considered available in the initial month for which eligibility is being determined regardless of whether either spouse agrees to sell or liquidate the resource, and regardless of whether either spouse refuses to make the resource available.

Medicaid Manual, Volume XIII, M1480.230, B, 1 (p. 18b).

7. The resource limit for one person is \$2,000. Medicaid Manual, Volume XIII, M1110.003, B (p. 2).

AGENCY DECISION: The hearing officer found in favor of the agency, based upon the following:

The Appellant applied for Medicaid coverage. The agency verified the resources, and determined that the Appellant's countable resources exceeded the Medicaid resource limit in the retroactive and ongoing months. Therefore, the local agency denied Medicaid coverage.

APPLICABLE CITATIONS FOR ACTION:

Social Security Act,
Title XIX, Section 1924

Medicaid Manual, Volume XIII,
S1110.003, B (p. 2)

M1480.000, A (p. 1)

M1480.200, B, 3, b (pp. 8a-b)

M1480.220, B, 2 (pp. 13-14)

M1480.230, B, 1 (p. 18b)